

IN THE DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH

PRESTON NUTTER CORPORATION,  
a Nevada corporation,

Plaintiff,

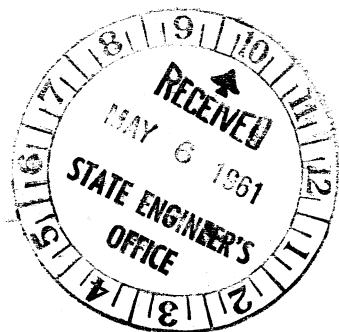
vs.

H. J. WIMMER, MRS. H. J. WIMMER,  
N. L. WIMMER, A widower, T. S.  
HOUSEKEEPER, MRS. T. S. HOUSE-  
KEEPER, ARTHUR BOLATAS,  
MRS. ARTHUR BOLATAS, M. H.  
PRESSETT, a single man, L. PRES-  
SETT, MRS. L. PRESSETT, MAYDAL  
LIVESTOCK CORPORATION, E. E.  
DAVIS, MELVIN SHARP, RICHARD  
FREED, DANIEL HAYES, and  
MAXINE BURDICK, individually and as  
Guardian and Trustee for BARBARA,  
HOWARD, JOHN, GERALD, CAROLYN,  
and SHIRLEY BURDICK, all minors,

Defendants.

Civil No. 3369

ORDER



Upon stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. That the stipulation of the parties should be, and the same is hereby, approved.
2. That the water shall be used in accordance with the said stipulation until the further order of this order, or the entry of the General Adjudication Decree in the proceedings now pending before this court.
3. That in order of priority the rights of the parties shall be as follows:
  - (a) The first prior rights to use the waters of Angyle Creek shall be those set forth in the Decree of the District Court of Carbon County, State of Utah, in a case entitled, "Peter Francis, plaintiff, v. Robert Powell, et al, defendants," Civil No. 108, which decree

was entered on or about the 5th day of November, 1900, with the rights being owned by the parties as successors in interest to the original parties, as is set forth in paragraph 1 of the stipulation, which is incorporated herein by reference.

(b) The next group of rights in order of priority shall be those rights initiated by filings in the Office of the State Engineer of the State of Utah and all rights covered by Certificates of Appropriation or by applications to appropriate which are now in good standing, but initiated prior to the date this action was filed, shall be recognized in accordance with the priority each bears and for the amounts of water, the periods of use, and the acreages therein specified, subject, however, to the condition that no party shall have more water than is needed by the lands presently being irrigated as determined by the State Engineer in the hydrographic surveys made for the General Adjudication suit.

(c) The next group of rights in order of priority shall be all acreage now being irrigated by any of the parties hereto with the waters of Argyie Creek, which acreage is in excess of that allowed by the Johnson Decree (Civil No. 100), as aforesaid, by certificates of appropriation and applications to appropriate now in good standing and filed prior to the date this action was filed. The priority for the water right for said excess acreage as to each of the parties hereto shall be equal and the amount of excess acreage not covered by the Johnson Decree or certificates, or pending applications, as aforesaid, shall be determined in accordance with the acreage computed by the State Engineer from the hydrographic surveys which have been or are now being completed by the State Engineer as a part of the General Adjudication of the waters of Argyie Creek, as aforesaid. High water available to the parties for said excess acreage over and

*Signature*  
*James H. 2.*

*Signature*

beyond the rights decreed in the Johnson Decree and the certificates of appropriation, and the pending applications filed prior to this action, will be pro-rated among the parties hereto for use in proportion to the excess storage irrigated by each as the same is shown and determined by the said State Engineer's hydrographic surveys.

(d) The next order of priority shall be Application No. 33144, filed by the defendant H. L. Wimmer in the Office of the State Engineer after this action was filed, which application contemplates the construction of a storage project to store the surplus waters of Arroyo Creek. The parties hereto all agree and stipulate hereby that said application may be approved subject to the prior rights recognized herein, and subject also to the rights of any and all of the parties to receive livestock water through the natural channel during the normal seasons when livestock would be in said fields; that is, between the 1st day of January and the 31st day of December of each year.

4. That the State Engineer should be, and he is hereby directed to, appoint a water commissioner to administer this interdecree decree, with the cost to be apportioned as is provided for in said stipulation, provided, however, that a water commissioner need not be appointed to act during periods of high flow when there is ample water, nor after the water has receded to such a low point during periods of extreme drought when the quantity available is too small to permit any of the parties to irrigate and still leave water in the stream to meet the needs of other users of livestock water. Any party objecting to the appointment of a water commissioner by the State Engineer or the refusal of the State Engineer to appoint a commissioner may, upon at least twenty days' notice served upon the attorneys of record for the other parties hereto, have the action of the State Engineer, or his refusal

to act reviewed by this court, and the court hereby specifically reserves jurisdiction thereof.

5. To facilitate stream administration, each of the parties is hereby ordered to install such headgates and measuring devices as the State Engineer shall order and direct. <sup>11</sup> The court hereby specifically reserves jurisdiction over this matter and any party may upon at least twenty days notice review the action of the State Engineer in ordering headgates or measuring devices or the refusal of the State Engineer to act. <sup>11</sup>

6. All matters covered by this interlocutory decree shall remain interlocutory until the entry of the General Adjudication Decree and the court specifically reserves jurisdiction to amend, review, change or supplement the same except as to the order of priority and as to said order of priority of the water rights, this order shall be final and shall be construed to adjudicate the same on the merits.

7. It is further ordered that each party should bear his own costs incurred herein.

Dated this 27 day of April, 1961.

BY THE COURT:

(s) R. L. Tuckett  
Judge

Copy of the foregoing mailed to Attorneys E. J. Sheen, Thomas Vuyk and Luke Peppas, on the 17th day of April, 1961.

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